

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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In the Matter of )  
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LAMBDA COMMUNICATIONS, INC. )  
 )  
Emergency Petition for )  
Rulemaking to Apply Expanded )  
Interconnection Obligations )  
to the Puerto Rico Telephone )  
Company )

RM No. 8708

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**DEC - 7 1995**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

To: The Commission

**REPLY COMMENTS ON PETITION FOR RULEMAKING**

Puerto Rico Telephone Company ("PRTC"), by its attorneys and pursuant to Section 1.405(b) of the Commission's Rules, 47 C.F.R. § 1.405(b), submits these Reply Comments in connection with the Petition for Rulemaking filed on September 29, 1995 by Lambda Communications, Inc. ("Lambda").<sup>1</sup>

In its Comments filed in this proceeding on November 22, 1995, PRTC demonstrated that the Commission should decline to begin a rulemaking to alter its expanded interconnection regulations as they apply to one company. As a threshold matter, PRTC is working to extend telephone service penetration in Puerto Rico to achieve the goals of the Commission's universal service policy. Nevertheless, penetration rates still lag far behind those of the mainland United States. Applying expanded interconnection to Puerto Rico will force PRTC to divert resources away from its universal service efforts and devote them to high volume urban users. Since new interstate access

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1. Public Notice, Doc. No. 60313 (Oct. 23, 1995).

providers are unlikely to build network facilities in currently unserved areas, Puerto Rico telephone service penetration rates will stagnate.

PRTC also explained that the factors underlying the Commission's 1992 decision to exempt PRTC from expanded interconnection requirements have not changed since the Commission's expanded interconnection order. What stands to change, however, is the national telecommunications regulatory landscape. Congress is conforming telecommunications legislation that will transform industry regulation in general and impose new interconnection requirements across the nation in particular. Faced with the prospect of a broad array of newly-mandated rulemaking proceedings — including proceedings to address expanded interconnection — the Commission should decline to undertake a PRTC-specific rulemaking proceeding now.

Against this background, the arguments of parties supporting Lambda's Petition fall short. For example, AT&T Corp. maintains that exempting PRTC from the Commission's expanded interconnection requirements "flies in the face of the Commission's objectives for establishing collocation requirements." AT&T Comments at 4. AT&T fails to acknowledge the dramatic service penetration gains realized by PRTC in the period during which expanded interconnection would have applied. As PRTC noted in its Comments, for example, PRTC has increased telephone service penetration in Puerto Rico from 64.3 percent in December 1992 to 71 percent in December 1994, a gain of 6.7

percentage points. Penetration in the mainland United States remained unchanged at 93.8 percent for the same period.

On this point, AT&T simply echoes Lambda's argument that reversing the Commission's decision to exempt PRTC from the expanded interconnection policy could actually improve Puerto Rico's telephone service penetration. AT&T Comments at 4. Beginning expanded interconnection in Puerto Rico, however, will likely slow the growth of telephone subscribership on the island, not increase it. PRTC will be forced to compete for revenues from its largest customers and will lose the ability to focus on expanding its network to underserved or unserved areas. At the same time, Lambda — an interstate access provider — is unlikely to construct a network in any areas not already served by PRTC. Potential subscribers in those areas will lose the benefit of PRTC's network extension effort as the company will be required to focus far greater attention on the fight for large urban customers. Telephone service penetration surely will not increase as a result.

Arguments advanced by Celpage, Inc. and MCI Telecommunications Corporation are similarly misplaced. Celpage suggests that the Commission should forego a rulemaking proceeding altogether and simply order PRTC to provide expanded interconnection. Celpage Comments at 3. MCI, on the other hand, argues that the Commission should determine whether National Exchange Carrier Association ("NECA") pool members that receive bona fide requests for expanded interconnection should be

permitted to remain in the pool. MCI Comments at 5. Each of these suggestions is off the mark.

After lengthy rulemaking procedures, the Commission exempted PRTC from the requirements of its expanded interconnection policy. Expanded Interconnection with Local Telephone Company Facilities, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369, 7398 (1992), Second Report and Order and Third Notice of Proposed Rulemaking, 8 FCC Rcd 7374, 7399-400 (1993). The Commission may not now reverse course and eliminate this Rule without appropriate rulemaking proceedings required under the Administrative Procedure Act ("APA").

"[T]he APA expressly contemplates that notice and an opportunity to comment will be provided prior to agency decisions to repeal a rule." Consumer Energy Council of Am. v. F.E.R.C., 673 F.2d 425, 446 (D.C. Cir. 1982) (emphasis added), aff'd, 463 U.S. 1216 (1983). See also Citibank, Fed. Sav. Bank v. F.D.I.C., 836 F. Supp. 3, 7 (D.D.C. 1993) ("[N]otice and comment procedures which apply to the creation of new regulations are equally applicable to the repeal of existing regulations"); Nat'l Wildlife Fed'n v. Watt, 571 F. Supp. 1145, 1156-58 (D.D.C. 1983) (noting that abandonment of regulation by agency based only on informal opinions that provision was unconstitutional would violate APA notice and comment rules); 5 U.S.C. § 551(5) ("rule making" includes "repealing a rule"). Thus, the Commission may not simply change its course by rescinding the PRTC exemption —

as suggested by Celpage and MCI — without violating the provisions of the APA.

Furthermore, it is well established that "an agency changing its course by rescinding a rule is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance." Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 42 (1983) (emphasis added). Thus, having adopted the PRTC exemption in 1992, the Commission's faces a heightened burden to justify a rescission of the rule.<sup>2</sup> This burden certainly cannot be met in the unilateral fashion suggested by Celpage and MCI. Instead, this greater "reasoned analysis" for rescinding a rule must be based on the record, after notice and opportunity to comment. Id. at 43-44.

As PRTC demonstrated in its Comments, however, the Commission should decline to begin a rulemaking to address its expanded interconnection rules just as Congress is preparing legislation that will revise existing telecommunications policy.

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2. Indeed, in State Farm the Supreme Court made clear that an agency rescinding a rule must confront the premise that the rule was properly adopted in the first instance:

Revocation [of a rule] constitutes a reversal of the agency's former views as to the proper course. A settled course of behavior embodies the agency's informed judgment that, by pursuing that course, it will carry out the policies committed to it by Congress. There is, then, at least a presumption that those policies will be carried out best if the settled rule is adhered to.


State Farm, 463 U.S. at 41-42 (quoting Atchison, Topeka & Santa Fe Ry. Co. v. Wichita Bd. of Trade, 412 U.S. 800, 807-08 (1973)) (quotations omitted).

Indeed, the Commission will be required to conduct a wide variety of rulemaking proceedings in the wake of the new legislative mandate. A substantial part of the Commission's duties will be to promulgate rules to implement a new nationwide local exchange interconnection regime. See S. 652, 104th Cong., 1st Sess. § 101 (1995) (directing the Commission to institute broad interconnection requirements for local exchange carriers under the terms of the bill); H.R. 1555, 104th Cong., 1st Sess. § 101 (1995) (ordering the Commission to implement specific minimum standards for the terms and conditions of interconnection agreements). The Commission should not now undertake to examine the very rules that will be the subject of a comprehensive revision in the near future.

#### **CONCLUSION**

For these reasons — and as demonstrated in PRTC's Comments in this proceeding — the Commission should deny Lambda's Petition for Rulemaking.

Respectfully submitted,

  
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Joe D. Edge  
Mark F. Dever  
DRINKER BIDDLE & REATH  
901 Fifteenth Street, N.W.  
Washington, D.C. 20005  
(202) 842-8800

Attorneys for

PUERTO RICO TELEPHONE COMPANY

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**CERTIFICATE OF SERVICE**

I, Esther Y. Chambers, hereby certify that the foregoing Reply Comments on Petition for Rulemaking were delivered by hand to the following on December 7, 1995:

Richard Rubin  
Mitchell F. Brecher  
Fleischman and Walsh, L.L.P.  
1400 Sixteenth Street, N.W.  
Suite 600  
Washington, D.C. 20036

Attorneys for  
Lambda Communications, Inc.

Frederick M. Joyce  
Joyce & Jacobs  
1019 19th Street, N.W.  
14th Floor, Penthouse 2  
Washington, D.C. 20036

Attorney for Celpage, Inc.

Mark C. Rosenblum\*  
Peter H. Jacoby  
AT&T Corp.  
295 North Maple Avenue  
Room 3245H1  
Basking Ridge, N.J. 07920

Attorneys for AT&T Corp.

Don Sussman  
MCI Telecommunications Corp.  
1801 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

Antoinette Cook Bush  
David H. Pawlik  
Skadden, Arps, Slate, Meagher  
& Flom  
1440 New York Avenue, N.W.  
Washington, D.C. 20005

Attorneys for Cellular  
Communications of Puerto  
Rico, Inc.

  
Esther Y. Chambers

\* By First Class Mail